

Guidelines for Medicare Set-Aside Arrangements in Lump Sum Settlements

Medicare status and lump sum settlement amount:	Does the application need to address Medicare's interest?	Is the CMS letter required prior to approval of the application?	Can the set-aside amount be used in calculating indemnity due?	What language must be used in the proposed order of approval?
Medicare eligible or current beneficiary, and settlement amount is over \$25,000.00 (current CMS review threshold).	YES.	YES.	NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due.	Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$50,000.00 plus \$10,000.00 to fund a Medicare Set-Aside . . ."
Medicare eligible or current beneficiary, and settlement amount is under \$25,000.00.	YES.	NO (below threshold).	NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due.	Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$15,000.00 plus \$1,000.00 to fund a Medicare Set-Aside . . ."
Reasonable expectation ¹ of Medicare enrollment within 30 months and settlement amount is over \$250,000.00.	YES.	YES.	NO. Set-aside amounts do not count as indemnity. Settlement amount alone must be sufficient to cover the indemnity due.	Settlement amount and set-aside amounts listed separately. For example, "upon payment of \$255,000.00 plus \$50,000.00 to fund a Medicare Set-Aside . . ."
Reasonable expectation ¹ of Medicare enrollment within 30 months and settlement amount is under \$250,000.00.	NO. Parties do not need to address Medicare's interests when claimant is not Medicare eligible or current beneficiary, and the settlement is below the CMS review threshold.	NO (below threshold).	YES. Any set-aside would be voluntary and the entire amount can be used to calculate indemnity coverage.	Total amount can include any voluntary set-aside funds.
No reasonable expectation ¹ of Medicare enrollment within 30 months, regardless of settlement amount.	NO.	NO.	YES. Any set-aside would be voluntary and the entire amount can be used to calculate indemnity coverage.	Total amount can include any voluntary set-aside funds.

¹One has a "reasonable expectation" of Medicare enrollment within 30 months when: he/she has applied for SSDI (becomes eligible for Medicare after receiving SSDI for 24 months) OR he/she is age 62.5 (will be eligible when he/she turns 65, which is within 30 months) OR he/she is appealing a denial of an application for Social Security benefits.